that in this case equity had jurisdiction for other reasons than to avoid a multiplicity of actions. Later decisions [7] in the federal courts have repudiated Pomeroy's doctrine, and cite with approval the leading Mississippi case.[8]

The better view and the one supported by the weight of authority is that of the principal case to the effect that equity will not take jurisdiction where there is no community of interest in the subject-matter.[9] The distinction between what does and what does not constitute a community of interest is well illustrated by the following quotation: "Two or more owners of mills propelled by water are interested in preventing an obstruction above that shall interfere with the downflow of the water, and may unite to restrain it or abate it as a nuisance; but they cannot hence unite in an action for damages, for, as to the injury suffered, there is no community of interest." [10] The "right" controverted must be of a peculiar character. It must be a common right, enjoyed in common by several persons, and in such a manner that the invasion of the right of one is really an invasion of the rights of all, such as a right of fishery.[11]

The trend of modern decisions seems to abandon the old and technical forms and for the sake of lessening litigation and saving time and expense, courts of equity will assume jurisdiction wherever they find that the consolidation will not confuse the issue, will not bring so many questions or varied interests into a case that they cannot be as well decided as if the cases were tried separately, and will not work a practical denial of a trial by jury.[12]

W. G. S.

LIBEL—PRIVILEGE—REPORT BY TRADE PROTECTION SOCIETY—An unusual decision has lately come down from the Court of Appeals of England [1] upon the question of privilege of communication as a defense in actions of libel and slander against mercantile agencies. The defendant was a mutual association of tradesmen, main-

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[7] Washington County, Neb., v. Williams, 111 Fed. Rep. 801, 812 (1901); Kansas City S. R. Co. v. Quigley, 181 Fed. Rep. 190, 196 (1910).

[8] Tribette v. Illinois Cent. R. Co., *supra*, n. 4.

[9] 1 High, Injunctions (4th Ed.), §65a; Southern Steel Co. v. Hopkins, 174 Ala. 465 (1911); Roanoke Guano Co. v. Saunders, 173 Ala. 347 (1911), overruling Southern Steel Co. v. Hopkins, 157 Ala. 175 (1908); Vandalia Coal Co. v. Lawson, *supra*, n. 5; Tribette v. Illinois Cent. R. Co., *supra*, n. 4; Ducktown v. Fain, 109 Tenn. 56 (1902); Illinois Steel Co. v. Shroder 133 Wis. 561 (1907).

[10] Bliss, Code Pl. (3rd Ed.), §76.

[11] 2 Story, Eq. Jurisp. (13th Ed.), §§854-856.

[12] Cases cited, *supra*, n. 9.

[1] Greenlands Lt'd v. Wilmshurst, *et al.*, 109 L. T. Rep. 487 (1913).

taining an office and secretary for securing information as to solvency and credit of customers generally. In this instance, inquiry having been made by one of the members concerning the standing of the plaintiff, the secretary wrote to a collecting agency in the plaintiff's city making inquiry. The report, for which a payment was made by the secretary, being unfavorable was forwarded to the first inquirer. Later it was found to be false; the jury finding express malice in the making of it by the collecting agency. Upon the plea of privileged communication entered by the mercantile association, Vaughn Williams, L. J., held the occasion of the communication was in nowise privileged. The information had been obtained for a fee from one who was neither servant nor agent of the group or any member of it. The court placed its decision alternatively upon *McIntosh* v. *Dun*,[2] saying "if it be law that persons who supply information and make a profit thereby, cannot set up privilege as a defense, it seems to follow that if a person buys information he cannot rely upon the information so bought as information given on a privileged occasion." The decision, Bray, L. J., dissenting, was admittedly contrary to the rule of Scotland,[3] Ireland,[4] Canada[5] and the American jurisdictions.

The occasion here falls under the classification, common to most writers,[6] of conditional or qualified privilege. This is not the case of a general publication to a large group, some of whom have no interest in the communication; but is made upon specific inquiry to a member of the association who has an interest in knowing the credit ratings of a single person. While the two English cases have thrown great doubt upon whether there is ever any privilege in making communications of mercantile agencies, under the English law, there can be few accepted cases found in America which are in accord.[7] Generally defamatory statements of a mercantile agency made by it or its agents in answer to inquiries from interested subscribers in confidence and good faith are privileged.[8] This rule, of

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[2] 99 L. T. Rep. 64 (1908).

[3] Bayne v. Stubbs, 3 F. 408; Keith v. Lauder, 8 F. 356; Barr v. Musselburgh Merch. Ass'n (1912) Sess. Cas. 174.

[4] Fitzsimmons v. Duncan, 2 Ir. Rep. 483, 498 (1908).

[5] Lemay v. Chamberlain, 10 Ont. 638 (1886); Todd v. Dun, 12 Ont. 791 (1888).

[6] Odgers on Libel and Slander (4th Ed.), 234; Starkie on Slander and Libel, 320; Townshend on Slander and Libel, 417, *et seq.*

[7] Beardsley v. Tappan, 5 Blatch. C. C. Rep. 498 (U. S. 1867); but this case is effectively criticized and rejected in Trussell v. Scarlett, 18 Fed. Rep. 214, to which is appended a case note by Francis Wharton.

[8] Erber v. Dun, 12 Fed. Rep. 526 (1882); Pollansky v. Minchener, 81 Mich. 280 (1890); King v. Patterson, 49 N. J. L. 419 (1887); Ormsby v. Douglas, 37 N. Y. 477 (1868); Laning v. Lonsdale, 48 Wis. 348 (1879); Trus-

course, gives ample protection against indiscriminate publication among subscribers generally who have no interest in the mercantile standing of the plaintiff.[9] In ruling the question of privilege, the American courts usually proceed from the broad view of the question as enunciated in *Harrison* v. *Bush*,[10] that "a communication made *bona fide* upon any subject-matter in which the party communicating has an interest, or in reference to which he has a duty, is privileged, if made to a person having a corresponding interest or duty, although it contained criminatory matter which, without this privilege, would be slanderous and actionable. . . . Duty cannot be confined to legal duties which may be enforced by indictment, action, or mandamus, but must include moral and social duties of imperfect obligation." One merchant desiring to enter into a transaction with a purchaser has an interest in knowing, and a right to know their character and standing, and to secure this may inquire of another merchant, and if such merchant or other person communicates in good faith, the information he has, the occasion is privileged.[11] He may require the services of another to secure him this information,[12] and is but a logical step, in view of efficient business administration to allow the union or association of several having a common agent to secure such information and place it at the confidential disposition of the members of the association in response to a specific inquiry. "In short, the inquiry is not, how did the defendant acquire the information, nor whether he received compensation for the information he had gained, but was the occasion one which justified him in giving such information as he possessed to the applicant." [13]

But the Court of Appeals took the view that duty or justification could not be shown to exist among the members when the actual communication was secured for a payment; that the duty to make the communication must attain the rank of a duty to society, to do what is for the good of society.

J. C. A.

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sel v. Scarlett, *supra*, n. 7; Sunderlin v. Bradstreet, 46 N. Y. 188 (1871); Lewis v. Chapman, 16 N. Y. 369, 375 (1857); Denney v. N. W. Credit Ass'n, 104 Pac. Rep. 769 (Wash. 1909).

[9] No privilege in such communications, Erber v. Dun; Trussell v. Scarlett; Ormsby v. Douglas; Laning v. Lonsdale, *supra*, n. 8; Taylor v. Church, 8 N. Y. 452 (1853); Mitchell v. Bradstreet Co., 116 Mo. 226 (1893); Com. v. Stacey, 8 Phila. 617 (1871); Gassett v. Gilbert, 6 Gray 94 (Mass. 1856).

[10] 5 E. & B. 344 (Eng. 1855).

[11] Cases cited, *supra*, n. 8; Odgers, 243; Errant on Mercantile Agencies, pp. 32-42.

[12] Ormsby v. Douglas, 37 N. Y. 485 (1868).

[13] Ormsby v. Douglas, *supra*, n. 12.